



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-L-

DATE: JUNE 14, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a Building Information Modeling (BIM) specialist in sustainable architecture design, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of a job offer, and thus of a labor certification, would be in the national interest. The matter is now before us on appeal.

With the appeal, the Petitioner submits a brief and contends that he is eligible for a national interest waiver. In March 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. The Petitioner did not respond to our request.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* clarifies that, after EB-2 eligibility as an advanced degree professional or individual of exceptional ability has been established, USCIS may grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. If these three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualified as a member of the professions holding an advanced degree. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Appeal Abandoned

We may summarily dismiss an appeal if the Petitioner does not respond to our RFE. The regulation provides, in pertinent part:

If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

8 C.F.R. § 103.2(b)(13)(i). Our RFE specifically informed the Petitioner that “[w]e may dismiss your appeal if we do not receive your response to this RFE **within 48 days of the date on the cover letter**. This time period includes 3 days added for service by mail.” (Emphasis in original.) To date, more than 48 days have lapsed, and we have yet to receive a response from the Petitioner on issues we discussed in the RFE. As such, we will summarily dismiss the appeal as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

B. Eligibility Under the *Dhanasar* Framework

In the alternative, we find that the Petitioner has not demonstrated that he satisfies the requirements set forth in *Dhanasar*. At the time of filing, the Petitioner was working as a design architect at the [REDACTED] office of [REDACTED], an international technical professional services firm. He proposes to work as a BIM specialist in sustainable architecture design.³

With respect to the national importance of the Petitioner's proposed endeavor, the Petitioner asserted that his work offered national benefits through architectural projects that "connect people across the United States." For example, he pointed to his past design work involving the [REDACTED] and [REDACTED] Aircraft's manufacturing facility. The Petitioner contended that these projects connect people to other parts of the country because "[REDACTED] Buses from around the country are using the [REDACTED] in between routes" and "aircrafts take Americans all over the country." Our RFE asked for evidence documenting the "potential implications and prospective impact" of his work.

As the Petitioner did not respond to our request, he has not demonstrated that he is eligible for a national interest waiver. Specifically, the record does not show that the benefits of his planning and design work would extend beyond his firm and its architectural projects at a level sufficient to demonstrate the national importance of his endeavor. Accordingly, without sufficient documentation of their broader impact, his BIM activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework.⁴ Furthermore, without additional information and evidence, the Petitioner has not established that he is well positioned to advance his proposed endeavor and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

III. CONCLUSION

As the Petitioner did not respond to our RFE seeking evidence to establish eligibility, the appeal is considered abandoned. In addition, as the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of J-L-*, ID# 386498 (AAO June 14, 2017)

³ The Petitioner explained that sustainable architecture "seeks to minimize the negative environmental impact of buildings." He described BIM "as a digital representation of the physical and functional characteristics of a structure" with which "resource allocation and reduction can be modeled and studied."

⁴ Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.